

**ENTERED**

November 05, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

CIPRIANO VARGAS,

Plaintiff,

v.

JANE DOE 1, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00205

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

Before the Court is Magistrate Judge Jason Libby's Memorandum and Recommendation ("M&R"), entered on October 20, 2021. (D.E. 10). The M&R recommends that Plaintiff's § 1983 claims against Defendants be dismissed with prejudice for failure to state a claim and as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). (D.E. 10). The M&R further recommends that the dismissal count as a "strike" for purposes of 28 U.S.C. § 1915(g). (D.E. 10). Plaintiff timely filed objections to the M&R on November 1, 2021. (D.E. 11).

First, Plaintiff objects to the Magistrate Judge's handling of aspects of this case. (D.E. 11). The Magistrate Judge is permitted to resolve all pre-trial, non-dispositive matters without the parties' consent under 28 U.S.C. § 636. Accordingly, this objection is **OVERRULED**.

Next, Plaintiff objects to the M&R's conclusion that his claim is frivolous, and that it should be counted as a "strike" under 28 U.S.C. § 636, by re-arguing the merits of his § 1983 claim. For the same reasons laid out in the M&R, these objections are

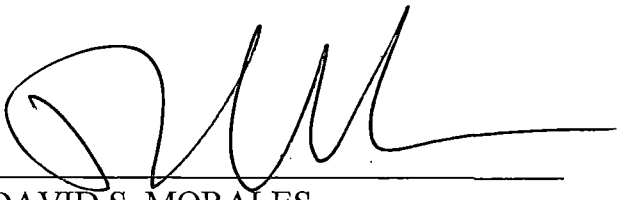
**OVERRULED.**

Thus, after having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the M&R to which Plaintiff's objections were directed, the Court **OVERRULES** Plaintiff's objections. (D.E. 11). Accordingly, the Court:

- (1) **ADOPTS** the M&R in its entirety. (D.E. 10).
- (2) Plaintiff's complaint (D.E. 1) is **DISMISSED with prejudice** for failure to state a claim for relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).
- (3) This dismissal is counted as a strike for purposes of 28 U.S.C. § 1915(g), and the Clerk of Court is **INSTRUCTED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).

A final judgment will be entered separately.

SO ORDERED.

  
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DAVID S. MORALES  
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas  
November 4<sup>th</sup>, 2021